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ZNR UUUUU ZZH
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FM AMEMBASSY ASTANA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 6420
INFO RUCNCIS/CIS COLLECTIVE 1981
RUCNCLS/ALL SOUTH AND CENTRAL ASIA COLLECTIVE
RUEHZL/EUROPEAN POLITICAL COLLECTIVE
RUEHBJ/AMEMBASSY BEIJING 1350
RUEHKO/AMEMBASSY TOKYO 2049
RUEHUL/AMEMBASSY SEOUL 1001
RUEAIIA/CIA WASHDC
RHEFAAA/DIA WASHDC
RHEHNSC/NSC WASHDC 1536
RUEKJCS/SECDEF WASHDC 1412
RUEKJCS/JOINT STAFF WASHDC
RHMFIUU/CDR USCENTCOM MACDILL AFB FL
RUEHGV/USMISSION GENEVA 1007
RUEHVEN/USMISSION USOSCE 2056
RUCNDT/USMISSION USUN NEW YORK 2507

UNCLAS SECTION 01 OF 02 ASTANA 001693

SENSITIVE
SIPDIS

STATE FOR SCA/CEN, EUR/RPM, DRL

E.O. 12958: N/A

TAGS: [PGOV](#) [PREL](#) [PHUM](#) [KDEM](#) [OSCE](#) [KZ](#)

SUBJECT: KAZAKHSTAN: ZHOVTIS DETERMINED TO KEEP FIGHTING

REFTEL: ASTANA 1538

1. (U) Sensitive but unclassified. Not for public Internet.

2. (SBU) SUMMARY: Convicted human rights advocate Yevgeniy Zhovtis told the visiting First Deputy Director of the Office for Democratic Institutions and Human Rights (ODIHR) on September 19 that he does not want any special treatment, just a chance at a fair appeal hearing. Zhovtis was in good spirits, had a good rapport with the detention center staff, and was determined to keep fighting. He considers an acquittal very unlikely, but insists that a suspended sentence or an amnesty (rumored to happen in December) will not be acceptable. Civil society activists told us separately that Zhovtis' conviction "shocked" many senior government officials, including officials within the Committee for National Security (KNB). Director of the Soros Foundation, Kazakhstan told us procedural violations in Zhovtis' trial, while numerous, were the norm rather than the exception in the Kazakhstani legal system, and she is not convinced they were aimed specifically at Zhovtis. END SUMMARY.

ZHOVTIS IN BATTLE SPIRITS

3. (SBU) Douglas Wake, First Deputy Director for the Office for Democratic Institutions and Human Rights (ODIHR), visited convicted human rights advocate Yevgeniy Zhovtis on September 19. He reported afterwards that Zhovtis is in good spirits, determined to keep fighting, and has good rapport with the detention center staff. Zhovtis told Wake that he does not want any special treatment, just a chance at a fair appeal hearing. Although he would like to appear at the appeal personally and present witnesses excluded in the first hearing, he admits that appeals under Kazakhstani practice involve no more than a review of the written record and limited statements by the prosecutor and defense.

4. (SBU) Zhovtis outlined for Wake four possible outcomes for the appeal: an acquittal (which he believes very unlikely); a reduction or suspension of the sentence that takes into account his settlement with the family (which, in his view, should have resulted in the dismissal of the case); return of the case to the first instance court for a new trial; or sustainment of the original verdict. He, along with other civil society representatives, expects that there

will be a general amnesty in December that would cover non-grave crimes, such as the one for which Zhovtis was convicted. He insisted to Wake that neither a suspended sentence nor an amnesty would be acceptable. Because he believes himself innocent of any crime, he is determined to fight until the conviction is overturned.

15. (SBU) Zhovtis told Wake that the timing of the appeal will depend on how the authorities want to present the case at OSCE's Human Dimension Implementation Meeting (HDIM) in Warsaw -- they could either speed up the process in order to have a "result" to present at the HDIM, or wait until after event so that they can tell people in Warsaw that the case is still under review. (NOTE: Several leading Kazakhstani NGOs plan to organize a side-event at the HDIM specifically on Zhovtis' case. Considering the HDIM begins this week, it is unlikely that Zhovtis' appeal will be heard before that. END NOTE.)

16. (SBU) Zhovtis was happy about the support he has received, although he was irritated that several picketers in Almaty were fined for holding protests of his conviction. He was quite unhappy with the Kazakhstani government's official response to international interventions, which cited statistics implying that Zhovtis' sentence was typical for such cases, or maybe even a bit light. He and other interlocutors insisted that the response grossly distorted the reality by lumping him in with the people who were drunk or killed pedestrians in crosswalks. He, on the other hand, was sober and blinded by oncoming traffic before hitting someone who was walking in the middle of a dark road.

PICKETS OF EMBASSIES "NOT HELPFUL"

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17. (SBU) Almaty Helsinki Committee's chair Ninel Fokina told the DCM separately on September 20 that Zhovtis will either get a suspended sentence on appeal and/or fall under the December amnesty, and that an acquittal is "extremely unlikely." She said the pickets of Kazakhstani embassies abroad organized by Zhovtis' international supporters "are not helpful," because they put the authorities on the defensive. She underlined the authorities' extreme sensitivity to the international attention to this case.

SENIOR OFFICIALS STUNNED

18. (SBU) Fokina believes that the verdict surprised many senior officials within the Kazakhstani government as much as the international community. The local courts "went overboard," she said, and many people within the Presidential Administration, the Ministry of Interior (MOI), and the Procurator General's Office (PGO) were "in shock." Zhemis Turmagambetova, the director of Charter for Human Rights, who is on good terms with many senior officials, confirmed this assessment. Turmagambetova told us she received a "frantic phone call" shortly after the verdict from an unnamed Deputy Director of the Committee for National Security (KNB), who asked for her advice on how to handle "this horrible situation." "Even the KNB has its hawks and its doves," said Turmagambetova. She shared that the Chairman of the Constitutional Council said in response to her query about the appeal timeline that the process will not be "dragged out."

OSI'S LEGAL AID

19. (SBU) The director of Soros Foundation, Kazakhstan, Anna Alexandrova, told the DCM on September 22 that the procedural violations in Zhovtis' trial, which were certainly numerous, were the norm, rather than the exception, in the Kazakhstani legal system. She is not convinced that they were aimed specifically at Zhovtis. She said Open Society Institute (OSI) dispatched a prominent U.S. lawyer, Scott Horton, to Kazakhstan to assist Zhovtis' legal team. According to Alexandrova, Horton also was to meet with people outside Zhovtis' defense team to obtain a "broad perspective" on the case. (NOTE: The ambassador alerted DFM Umarov of Horton's pending arrival on September 11 and underscored that this was an OSI, not/not a USG initiative (see reftel). Political LES who attended Zhovtis' trial briefed Horton on September 25. END

NOTE.)

¶10. (SBU) COMMENT: Fokina and Turmagembetova's comments fall in line with what we heard previously from Zhovtis' lead lawyer, Vitaliy Voronov (reftel). It seems momentum is building within the government to resolve this case quietly. To smooth the process, the MFA has cautioned that we should continue to be sensitive and careful about how we approach the Kazakhstani government on this issue and stick strictly to advocating a fair and transparent appeal process. END COMMENT.